



**Ninety-Ninth Legislature - First Session - 2005**  
**Committee Statement**  
**LB 570**

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**Hearing Date:** February 1, 2005

**Committee On:** Banking, Commerce and Insurance

**Introducer(s):** (Landis)

**Title:** Adopt a revised Article 1 of the Uniform Commercial Code

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**Roll Call Vote – Final Committee Action:**

Advanced to General File

X Advanced to General File with Amendments

Indefinitely Postponed

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**Vote Results:**

8	Yes	Senators Mines, Redfield, Flood, Jensen, Johnson, Langemeier, Louden, Pahls
	No	
	Present, not voting	
	Absent	

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**Proponents:**

Senator David Landis  
John McCabe

**Representing:**

Introducer  
National Conference of Commissioners on  
Uniform State Laws

**Opponents:**

**Representing:**

**Neutral:**

Bob Hallstrom  
Ron Sedlacek  
Loy Todd

**Representing:**

NE Bankers Assn.  
NE Chamber of Commerce  
NE New Car & Truck Dealers Assn.

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**Summary of purpose and/or changes:**

LB 570 (Landis) would enact Revised Uniform Commercial Code (UCC) Article 1 – General Provisions, as approved and recommended to the states by the National Conference of Commissioners on Uniform State Laws in 2001. The bill would completely repeal and replace Nebraska's current version of UCC Article 1, which was originally enacted in 1963.

Article 1 of the Uniform Commercial Code provides definitions and general provisions that, in the absence of conflicting provisions, apply as default rules covering transactions and matters otherwise covered under a different article of the UCC. Other parts of the UCC have

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been revised and amended to accommodate changing business practices and development in the law. These changes are reflected in this update of Article 1.

Revised Article 1 contains technical, non-substantive modifications, such as reordering and renumbering of sections and adding of gender-neutral terminology. In addition, several other changes reflect an effort to add greater clarity to the provisions of Article 1. Finally, the uniform law commissioners have determined that developments in the law require that certain substantive changes in Article 1 be made as well. These changes include the following:

**Scope.** Revised Section 1-102 provides that the substantive rules of Article 1 apply only to transactions governed by other articles of the UCC. There is no impact outside the UCC.

**Applicability of supplemental principles of law.** Revised Section 1-103 clarifies the application of supplemental principles of law, with clearer distinctions about where the UCC is preemptive. This section reflects the interrelationship between the UCC's purposes and policies and the extent to which other law is available to supplement the UCC.

**Good Faith.** Revised Section 1-201 adopts the objective standard of "good faith" that applies in all of the recently revised UCC articles (except Revised Article 5).

**Course of performance.** Under Revised Section 1-304, evidence of "course of performance" (a concept currently utilized only in Articles 2 and 2A of the UCC) may be used to interpret a contract along with course of dealing and usage of trade.

**Statute of Frauds.** The statute of frauds requirement in former section 1-201, which was aimed at transactions beyond the coverage of the UCC, has now been deleted.

**Conforming Amendments.** The bill would make technical conforming amendments, generally involving such things as internal references, in sections in UCC Articles 2, 2A, 3, 4, 4A, 5, 8, and 9, as recommended by the uniform law commissioners, and also in Nebraska statutes sections in Chapters 45, 53, 69, and 86.

**Nonuniform provisions.** The bill contains Nebraska-specific provisions all of which are carried over from Nebraska's version of former Article 1.

- In the definitions of "creditor" and "representative" in subdivisions (b) (13) and (b)(33) of Revised Section 1-201, "personal representative" is inserted (based on provisions of subdivisions (12) and (35) of former Section 1-201) in order to maintain terminology consistency of the UCC with the Nebraska Probate Code.
- In the definition of "security interest" in subdivision (b)(35) of Revised Section 1-201, the following nonuniform sentence is inserted: "Security interest does not include a consumer rental purchase agreement as defined in the Consumer Rental Purchase Agreement Act." The inserted sentence is based on a nonuniform sentence added to the definition of "security interest" in subdivision (37) of former Section 1-201 as part of the enactment of the Consumer Rental Purchase Agreement Act in 1989.

- The provisions of Revised Section 1-301 regarding territorial applicability and parties' powers to choose applicable law are omitted and replaced with language based on former Section 1-105 which provides that, subject to enumerated exceptions, when any transaction bears a reasonable relation to this state and also another jurisdiction shall govern their rights and duties, and in the absence of such an agreement, the UCC applies to transactions bearing an appropriate relation to this state.

The bill, section by section, contains the following provisions:

#### CONFORMING AMENDMENTS

Sections 1 to 5. Sections 45-1,109, 53-208, 69-2103, 86-630, and 86-643. Harmonizing amendments of internal references.

#### REVISED ARTICLE 1 GENERAL PROVISIONS

##### PART 1. GENERAL PROVISIONS

Section 6. Section 1-101. Short Titles.

Section 7. Section 1-102. Scope of Article.

Section 8. Section 1-103. Construction of Uniform Commercial Code to Promote its Purposes and Policies; Applicability of Supplemental Principles of Law.

Section 9. Section 1-104. Construction Against Implied Repeal.

Section 10. Section 1-105. Severability.

Section 11. Section 1-106. Use of Singular and Plural; Gender.

Section 12. Section 1-107. Section Captions.

Section 13. Section 1-108. Relation to Electronic Signatures in Global and National Commerce Act.

##### PART 2. GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

Section 14. Section 1-201. General Definitions.

Section 15. Section 1-202. Notice; Knowledge.

Section 16. Section 1-203. Lease Distinguished from Security Interest.

Section 17. Section 1-204. Value.

Section 18. Section 1-205. Reasonable Time; Seasonableness.

Section 19. Section 1-206. Presumptions.

### PART 3. TERRITORIAL APPLICABILITY AND GENERAL RULES

Section 20. Section 1-301. Territorial Applicability; Parties' Power to Choose Applicable Law.

Section 21. Section 1-302. Variation by Agreement.

Section 22. Section 1-303. Course of Performance, Course of Dealing, and Usage of Trade.

Section 23. Section 1-304. Obligation of Good Faith.

Section 24. Section 1-305. Remedies to be Liberally Administered.

Section 25. Section 1-306. Waiver or Renunciation of Claim or Right After Breach.

Section 26. Section 1-307. Prima Facie Evidence by Third-Party Documents.

Section 27. Section 1-308. Performance or Acceptance Under Reservation of Rights.

Section 28. Section 1-309. Option to Accelerate at Will.

Section 29. Section 1-310. Subordinated Obligations.

### CONFORMING AMENDMENTS

Sections 30 to 45. UCC Sections 2-103, 2-202, 2A-103, 2A-501, 2A-518, 2A-519, 2A-527, 2A-528, 3-103, 4-104, 4A-105, 4A-106, 4A-204, 5-103, 8-102, and 9-102. Conforming amendments approved and recommended by the Uniform Law Commissioners.

### MISCELLANEOUS PROVISIONS

Section 46. Directions for the Revisor of Statutes.

Section 47. Operative date of January 1, 2006.

Section 48. Repealers of amendatory sections.

Section 49. Outright repealers.

### **Explanation of amendments, if any:**

The committee amendments would insert the provisions of LB 171 (Landis) in order to enact Revised Uniform Commercial Code (UCC) Article 7-Documents of Title, as approved and recommended to the states by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in 2003. This would repeal and replace Nebraska's current version of UCC Article 7-Warehouse Receipts, Bills of Lading, which was originally enacted in 1963.

It is a practical necessity that Revised UCC Article 1 and Revised UCC Article 7 be enacted in the same legislative bill in order to properly accommodate the conforming amendments these revised articles must make in other UCC articles. This is especially important in the case of the conforming amendments Revised UCC Article 7 must make in UCC Article 1.

#### UCC Article 1 Amendments

The committee amendments change Revised UCC Section 1-201(b)(20) (Section 14 of the committee amendments) so as to retain in Nebraska the current UCC Article 1 definition of “good faith”: “honesty in fact in the conduct or transaction concerned” rather than a new definition: “honesty in fact and the observance of reasonable commercial standards of fair dealing.”

#### UCC Article 7 Amendments

Revised UCC Article 7 is the last of the articles of the Uniform Commercial Code to be revised by the National Conference of Commissioners on Uniform State Laws. The genesis of this project is twofold: to provide a framework for the further development of electronic documents of title and to update the article for modern times in light of state, federal, and international developments. Each section has been reviewed by NCCUSL to determine its suitability given modern practice, the need for medium and gender neutrality, and modern statutory drafting.

To provide for electronic documents of title, several definitions in Revised UCC Article 1 have been revised including “bearer,” “bill of lading,” “deliver,” “document of title,” “holder,” and “warehouse receipt.” The concept of an electronic document of title allows for commercial practice to determine whether records issued by bailees are “in regular course of business or financing” and are “treated as adequately evidencing that the person in possession or control of the record is entitled to receive, control, hold, and dispose of the record and the goods the record covers.” Revised UCC Section 1-201(b)(16). Such records in electronic form are electronic documents of title and in tangible form are tangible documents of title. Conforming amendments to other Articles of the UCC are also necessary to fully integrate electronic documents of title into the UCC.

Key to the integration of the electronic document of title scheme is the concept of “control” defined in Revised UCC Section 7-106. This definition is adapted from the Uniform Electronic Transactions Act Section 16 on Transferrable Records (Section 86-643) and from UCC Section 9-105 concerning control of electronic chattel paper. Control of an electronic document of title is the conceptual equivalent to possession and indorsement of a tangible document of title. Of equal importance is the acknowledgment that parties may desire to substitute an electronic document of title for an already-issued paper document and vice versa. Revised UCC Section 7-105 sets forth the minimum requirement that need to be fulfilled in order to give effect to the substitute document issued in the alternate medium. To the extent possible, the rules for electronic documents of title are the same or as similar as possible to the rules for tangible documents of title. If a rule is meant to be limited to one medium or the other, that is clearly stated. Rules that reference documents of title, warehouse receipts, or bills of lading without a designation to “electronic” or “tangible” apply to documents of title in either medium. As with tangible negotiable documents of title, electronic negotiable documents of title may be negotiated and duly negotiated. Revised UCC Section 7-501.

Other changes that have been made are:

1. New definitions of “carrier,” “good faith,” “record,” “sign” and “shipper” in Revised UCC Section 7-102.
2. Deletion of references to tariffs or filed classifications given the deregulation of the affected industries. See e.g., Revised UCC Sections 7-103 and 7-309.
3. Clarifying the rules regarding when a document is nonnegotiable. Revised UCC Section 7-104.
4. Making clear when rules apply just to warehouse receipts or bills of lading, thus eliminating the need for former UCC Section 7-105.
5. Clarifying that particular terms need not be included in order to have a valid warehouse receipt. Revised UCC Section 7-202.
6. Broadening the ability of the warehouse to make an effective limitation of liability in its warehouse receipt or storage agreement in accord with commercial practice. Revised UCC Section 7-204.
7. Allowing a warehouse to have a lien on goods covered by a storage agreement and clarifying the priority rules regarding the claim of a warehouse lien as against other interests. Revised UCC Section 7-209.
8. Conforming language usage to modern shipping practice. Revised UCC Sections 7-301 and 7-302.
9. Clarifying the extent of the carrier’s lien. Revised UCC Section 7-307.
10. Adding references to UCC Article 2A when appropriate. See e.g., Revised Sections 7-503, 7-504, and 7-509.
11. Clarifying that the warranty made by negotiation or delivery of a document of title should apply only in the case of a voluntary transfer of possession or control of the document. Revised UCC Section 7-507.
12. Providing greater flexibility to a court regarding adequate protection against loss when ordering delivery of the goods or issuance of a substitute document. Revised UCC Section 7-601.
13. Providing conforming amendments to the other Articles of the Uniform Commercial Code to accommodate electronic documents of title.

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**Senator Mick Mines, Chairperson**